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MAY 18 2010

OFFICE OF PETITIONS

In re Application of	:	
Danishefsky et al.	:	DECISION ON
Application No. 09/641,742	:	APPLICATION FOR
Filed: 08/18/2000	:	PATENT TERM ADJUSTMENT
Attorney Docket No.	:	
2003080-0054	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 35 U.S.C. § 154(b) and 37 C.F.R. § 1.705(b)" filed on December 15, 2009. Applicants request that the initial determination of Patent Term Adjustment for the above-identified patent be corrected from 0 days to 947 days.

The application for patent term adjustment patent is **GRANTED TO THE EXTENT INDICATED.**

The Office has updated the PALM and PAIR screen to reflect that the Patent Term Adjustment (PTA) at the time of the mailing of the Notice of Allowance is 44 days. A copy of the updated PALM screen, showing the revised determination, is enclosed.

On September 28, 2009, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) in the above-identified application, stating that the patent term adjustment to date was 0 days (603 days of Office delay and 1175 days of applicant delay). This application for patent term adjustment was timely filed with or prior to payment of the issue fee.¹

¹ PALM records indicate that the issue fee was paid on December 15, 2009.

Applicants assert that an adjustment for Office delay of 1010 days, rather than 486 days, should be entered pursuant to 37 CFR 1.702(a)(2) for the period from four months after the filing of a reply to the Office action mailed on February 12, 2002, to the mailing of the Office action mailed on May 18, 2005.

Applicants are correct. On February 12, 2002, an Office action (restriction requirement) was mailed. On April 12, 2002, two (2) pages of an Auto-Reply Facsimile Transmission and sending unit's facsimile transmission receipt, showing the receipt of 108 pages in the Office, was filed. However, the 108 pages were not entered in the official file. On October 21, 2002, a Notice of Abandonment was mailed. On November 15, 2002, a petition to withdraw the holding of abandonment was filed, accompanied by a copy of the reply asserted to have been filed on April 12, 2002. On November 20, 2003, the petition to withdraw the holding of abandonment was granted. On May 18, 2005, four months and 1010 days after the filing of the reply on April 12, 2002, an Office action was mailed.

Accordingly, the 486 day period of adjustment for Office delay will be removed, and a 1010 day period of adjustment for Office delay will be entered. As the reply to the first Office action was filed on April 12, 2002, not September 18, 2003, the 494 day period of reduction for applicant delay will be removed.

Applicants further dispute the 501 day period of reduction, from the filing of a reply on September 18, 2003, to the filing of a supplemental Information Disclosure Statement (IDS) on January 31, 2005.

37 CFR 1.704(c)(8) states that circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping: submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed.

On July 1, 2002, November 15, 2002, September 18, 2003, January 12, 2004, and January 31, 2005, Information Disclosure Statements (IDSs) were filed, after the filing of the reply on April 12, 2002. The IDSs did not contain the statement set forth at 37 CFR 1.704(d).

The periods from the filing of reply filed on April 12, 2002, to the filing of the IDSs filed on July 1, 2002, November 15, 2002, September 18, 2003, January 12, 2004, and January 31, 2005, overlap. The non-overlapping period of delay is the period from the day after April 12, 2002, the date the initial reply was filed, until January 31, 2005, the date the last IDS filed before the subsequent Office action was mailed, was filed, or 903 days.

As the reply to the first Office action was filed on April 12, 2002, not September 18, 2003, the period of reduction of 501 days for Office delay pursuant to 37 CFR 1.704(c)(8) will be removed, and a period of reduction of 903 days will be entered.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is forty-four (44) days (1127 (117 + 1010) days of Office delay and 1083 (903 + 33 + 11 + 29 + 61 + 18 + 2 + 26) days of applicant delay).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office of Data Management has been advised of this decision. The application is thereby forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and if applicable, for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

A handwritten signature in black ink, appearing to read 'Anthony Knight', is written over the typed name.

Anthony Knight
Director
Office of Petitions

Encl: Copy of adjusted PAIR calculation

Day : Friday
Date: 5/14/2010

PALM INTRANET

Time: 15:51:47

PTA Calculations for Application: 09/641742

Application Filing Date:	08/18/2000	PTO Delay (PTO):	603
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	1175
Post-Issue Petitions:	0	Total PTA (days):	44
PTO Delay Adjustment:	616		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
128	05/14/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	616		
115	09/28/2009	MAIL NOTICE OF ALLOWANCE			
114	09/25/2009	ISSUE REVISION COMPLETED			
113	09/25/2009	DOCUMENT VERIFICATION			
112	09/25/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
111	09/25/2009	CASE DOCKETED TO EXAMINER IN GAU			
110	09/24/2009	NOTICE OF ALLOWABILITY			
104	09/16/2009	DATE FORWARDED TO EXAMINER			
103	08/12/2009	RESPONSE AFTER NON-FINAL ACTION		26	100
102	08/12/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
100	04/17/2009	MAIL NON-FINAL REJECTION			
99	04/16/2009	NON-FINAL REJECTION			
95	03/20/2009	DATE FORWARDED TO EXAMINER			
94	03/19/2009	AMENDMENT AFTER FINAL REJECTION			
93	01/07/2009	MAIL FINAL REJECTION (PTOL - 326)			
92	01/05/2009	FINAL REJECTION			
90	11/03/2008	DATE FORWARDED TO EXAMINER			
89	10/27/2008	RESPONSE AFTER NON-FINAL ACTION		2	88
88	07/25/2008	MAIL NON-FINAL REJECTION			
87	07/21/2008	NON-FINAL REJECTION			
85	04/18/2008	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
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83	04/18/2008	RESPONSE AFTER NON-FINAL ACTION		18	81
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81	12/31/2007	MAIL NON-FINAL REJECTION			
80	12/26/2007	NON-FINAL REJECTION			
78	10/17/2007	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
77	10/22/2007	DATE FORWARDED TO EXAMINER			
76	10/17/2007	RESPONSE AFTER NON-FINAL ACTION		61	74
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74	05/17/2007	MAIL NON-FINAL REJECTION			
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72	03/01/2007	DATE FORWARDED TO EXAMINER			
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70	11/20/2006	MAIL NON-FINAL REJECTION			
69	11/13/2006	NON-FINAL REJECTION			
68	03/22/2001	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
67	11/15/2002	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
66	09/13/2006	CORRESPONDENCE ADDRESS CHANGE			
65	09/01/2006	DATE FORWARDED TO EXAMINER			
64	08/23/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
63	09/01/2006	DATE FORWARDED TO EXAMINER			
62	08/23/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)		29	54
61	09/01/2006	DISPOSAL FOR A RCE / CPA / R129			
60	08/23/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
59	08/23/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
58	07/14/2006	MAIL ADVISORY ACTION (PTOL - 303)			
57	07/10/2006	ADVISORY ACTION (PTOL-303)			
56	06/30/2006	DATE FORWARDED TO EXAMINER			
55	06/23/2006	AMENDMENT AFTER FINAL REJECTION			
54	04/25/2006	MAIL FINAL REJECTION (PTOL - 326)			
53	07/01/2002	REFERENCE CAPTURE ON IDS			
52	11/15/2002	REFERENCE CAPTURE ON IDS			
51.7	11/15/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

51	11/15/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
50	03/22/2001	REFERENCE CAPTURE ON IDS			
49.7	03/22/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
49	03/22/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
48	04/17/2006	FINAL REJECTION			
47	08/22/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
46	02/02/2006	DATE FORWARDED TO EXAMINER			
45	01/23/2006	RESPONSE AFTER NON-FINAL ACTION		11	43
44	11/30/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
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38	07/28/2005	DATE FORWARDED TO EXAMINER			
37	07/20/2005	RESPONSE TO ELECTION / RESTRICTION FILED			
36	07/20/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
35	06/28/2005	CASE DOCKETED TO EXAMINER IN GAU			
34	05/18/2005	MAIL RESTRICTION REQUIREMENT	486		30
33	05/16/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
30	09/18/2003	RESPONSE TO ELECTION / RESTRICTION FILED		494	14
27	09/18/2003	REQUEST FOR EXTENSION OF TIME - GRANTED			
26	09/18/2003	REFERENCE CAPTURE ON IDS			
25.7	09/18/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
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24.7	01/31/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		501	30
24	01/31/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

23	01/12/2004	REFERENCE CAPTURE ON IDS			
22.7	01/12/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
22	01/12/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
21	11/26/2003	MAIL NOTICE OF RESCINDED ABANDONMENT			
20	11/25/2003	NOTICE OF RESCINDED ABANDONMENT IN TCS			
19	11/20/2003	MAIL-PETITION TO REVIVE APPLICATION - GRANTED			
18	11/12/2002	PETITION ENTERED			
17	10/21/2002	MAIL ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
16	10/18/2002	ABAND. FOR FAILURE TO RESPOND TO O. A.			
15.7	07/01/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	07/01/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	02/12/2002	MAIL RESTRICTION REQUIREMENT	117		-1
13	02/11/2002	REQUIREMENT FOR RESTRICTION / ELECTION			
12	12/10/2001	CASE DOCKETED TO EXAMINER IN GAU			
11.7	08/20/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	08/20/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	05/18/2001	CASE DOCKETED TO EXAMINER IN GAU			
9	01/05/2001	APPLICANT HAS FILED A VERIFIED STATEMENT OF SMALL ENTITY STATUS IN COMPLIANCE WITH 37 CFR 1.27			
8	01/05/2001	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
7	04/10/2001	APPLICATION DISPATCHED FROM OIPE			
6	04/07/2001	APPLICATION IS NOW COMPLETE			
5	04/06/2001	CORRESPONDENCE ADDRESS CHANGE			
4	10/25/2000	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
3	10/03/2000	CORRESPONDENCE ADDRESS CHANGE			
2	09/05/2000	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	08/18/2000	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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